

**OPINION  
45-271**

June 11, 1945        (OPINION)

**SCHOOL DISTRICTS**

**RE: Common - Elections - Candidates**

**Re: Solen School Election**

Your letter of June 9 relative to the above entitled matter has been received and contents noted.

The question you present is as to the validity of the election of two members to the Solen School District No. 3. It appears that two candidates who sought election as members of the school board filed their names and the names of the offices with the school clerk at least five days prior to the election. For some reason the clerk failed to have their names printed on the official ballot. The result was that two other candidates who ran on stickers were elected, the vote being in one case 103 to 66 and 104 to 65 in favor of the sticker candidates. The question presented is as to the validity of the election in view of the fact that the clerk failed to place upon the tickets the names of the candidates who had filed their names with him prior to the election.

Section 15-2406 of the North Dakota Revised Code of 1943 provides as follows:

In common school districts where more than one polling place has been designated by the school board, any person desiring to be a candidate at the annual election therein shall file his name and the name of the office which he seeks with the clerk of the school board not less than five days prior to the election. At least three days before the election, the clerk shall prepare and have printed an official ballot containing all of the names filed as provided in this section. The ballot shall:

1.     Be headed official ballot;
2.     Contain the name of the district;
3.     Contain the date of the election;
4.     Be nonpartisan;
5.     State the number of persons for whom votes may be cast for each office;

6. Contain blank spaces beneath the names of the candidates for each office in which additional names may be written by the electors.

Any person who fails to file as provided in this section for an office which he seeks may provide stickers to be attached to the official ballot. Such stickers shall not be more than one-half inch in width and shall contain the name of only one candidate."

You will note this law provides that where there is more than one polling place any person desiring to be a candidate at the annual election shall file his name and the name of the office which he seeks with the clerk, etc. However, in this particular district there was only one polling place, consequently, there was no necessity for the filing of names prior to the election.

You will note also that the same statute provides that any person who fails to file as provided therein may provide stickers to be attached to the official ballot. It is clear therefore that the two candidate who were elected on stickers had a perfect right under the provisions of the statutes to be candidates by the sticker route.

It occurs to us that it cannot be said that the voters were not aware of the candidacy of the two defeated candidates. According to the votes cast, they received 65 and 66 respectively as against 104 and 103 of the successful candidates. An election has been held and the people have expressed their choice, and there is no evidence of fraud of any kind.

Of course the defeated candidates would have a perfect right to content the election if they are so disposed, but this office is not in a position to state that the election is void or even voidable. That is a question of course that must be determined judicially.

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Attorney General